

\* Return To: Luckett Land Title  
5740 Getwell Rd. Bldg 9, Ste A  
Southaven, MS 38672

DRAWN BY AND RETURN TO:  
King & Spalding LLP  
227 West Trade Street  
Suite 600  
Charlotte, NC 28202  
Attn: Mark V. Thigpen

### **RECIPROCAL EASEMENT AGREEMENT**

This **RECIPROCAL EASEMENT AGREEMENT** ("Agreement") is entered into as of this 4<sup>th</sup> day of September, 2008 (the "Effective Date"), between AMERICAN FUND US INVESTMENTS LP, a Delaware limited partnership ("American Fund"), and OBP HEW II, LLC, a Tennessee limited liability company ("OBP").

#### **Preliminary Statement**

A. American Fund is the owner of approximately 40.169 acres of land, together with improvements, situated in the Olive Branch, DeSoto County, Mississippi, more particularly described in **Exhibit A** attached hereto and made a part hereof (the "Property").

B. OBP is the owner of approximately 28.151 acres of land, together with improvements, which abuts the Property and which is situated in the Olive Branch, DeSoto County, Mississippi, more particularly described in **Exhibit B** attached hereto and made a part hereof (the "Adjacent Tract").

C. OBP and American Fund acknowledge that they desire to create certain access, utility and drainage easements over the Property to serve the Adjacent Tract and over the

Adjacent Tract to serve the Property, as more particularly described below.

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein and for such other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby grant, covenant, and agree as follows:

**1. Grant of Common Access Driveway Easements, Utility Easement and Stormwater Drainage Easement.**

A. American Fund by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto OBP, as an appurtenance to the Adjacent Tract, a non-exclusive, perpetual easement in, on, over and across the driveways that exist from time to time within Easement Area 1 (as defined below) for the sole purpose of vehicular access to and from the Adjacent Tract to and from Polk Lane (a public right of way), which easement shall include the right of OBP, at its sole cost and expense, to construct two (2) curb cuts from Easement Area 1 onto the Adjacent Tract in the approximate locations labeled "Curb Cuts" on Exhibit C attached hereto and incorporated herein by reference. OBP's use of Easement Area 1 pursuant to the easements granted herein shall not unreasonably interfere with American Fund's use of portions of Property within the Easement Area 1, and American Fund reserves the right to use such areas for any purposes not inconsistent with the rights granted herein. As used herein, "Easement Area 1" shall mean that certain portion of the Property shown as shaded and labeled as "Easement Area 1" on Exhibit C attached hereto.

B. OBP by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto American Fund, as an appurtenance to the Property, a non-exclusive, perpetual easement in, on, over and across the driveways that exist from time to time within Easement Area 2 (as defined below) for the sole purposes of (i) vehicular access to and from the Property to and from Polk Lane (a public right of way) for emergency vehicles only, which easement includes the right of American Fund, at its sole cost and expense, to construct a connection from the terminus of any driveway(s) within the Easement Area 2 onto the Property; and (ii) use, maintenance, repair and replacement of that certain overhead electrical line as and where located from time to time within Easement Area 2, for the purposes of providing continued electrical service to the Property. American Fund's use of Easement Area 2 pursuant to the easements granted herein shall not unreasonably interfere with OBP's use of portions of Adjacent Tract within Easement Area 2, and OBP reserves the right to use such areas for any purposes not inconsistent with the rights granted herein. As used herein, "Easement Area 2" shall mean that certain portion of the Adjacent Tract shown as shaded and labeled as "Easement Area 2" on Exhibit C attached hereto.

C. OBP by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto American Fund, as an appurtenance to the Property, and American Fund does hereby GRANT, BARGAIN, SELL AND CONVEY to OBP, as an appurtenance to the Adjacent Tract, a non-exclusive, perpetual easement in, over and across the stormwater drainage facilities that exist from time to time within Easement Area 3 (as defined below) for the sole purposes of channeling the drainage of stormwater from the Property and the Adjacent Tract, respectively,

into the detention basins within Easement Area 3, which easement includes the right of American Fund to maintain, repair and replace, as necessary, said stormwater drainage facilities, subject to the cost sharing provisions of Section 4 hereof. As used herein, "Easement Area 3" shall mean those certain portions of the Property and the Adjacent Tract, respectively, shown as shaded and labeled as "Easement Area 3" on Exhibit C attached hereto.

**2. Maintenance of Driveway within Easement Area 2.**

From and after the date hereof, OBP, or the then-owner of the Adjacent Tract (the owner of the Adjacent Tract from time to time being the "AT Owner"), at the AT Owner's sole cost and expense, shall maintain a driveway which complies with the requirements of all applicable laws, statutes, ordinances, fire and building codes and departments from time to time applicable to or having jurisdiction over the Property ("Applicable Codes") within Easement Area 2 in approximately the location labeled "Asphalt Drive" and shown on Exhibit C attached hereto. American Fund shall be entitled to construct a driveway connecting to said Asphalt Drive within Easement Area 2, at its sole cost and expense, at any time from and after the date hereof. OBP hereby grants to American Fund a temporary construction and access easement over the Adjacent Tract for all purposes required by American Fund to construct such driveway. OBP may, at its sole election and expense, install one or more methods of access control between said Asphalt Drive and Polk Lane, such as (by way of example and not limitation) a gate across the drive or a guardhouse adjacent to the drive, so long as such access control complies with requirements of Applicable Codes.

**3. Maintenance of Common Access Driveways.**

A. American Fund, at its sole cost and expense, shall maintain and repair the driveways located in Easement Area 1, and OBP shall reimburse American Fund for fifty percent (50%) ("OBP's Share") of the reasonable cost and expense incurred by American Fund to maintain and repair the driveways located in Easement Area 1 (the "Easement Area 1 Costs"). OBP shall pay OBP's Share of such Easement Area 1 Costs within thirty (30) days after receipt of a statement setting forth the Easement Area 1 Costs incurred by American Fund and OBP's Share thereof. If OBP fails to reimburse American Fund for such Easement Area 1 Costs within thirty (30) days after receipt of a statement, then (i) American Fund shall have a lien against the Adjacent Tract for such costs and expenses until same are paid by OBP, but such lien shall be subordinate to the first lien of any deed of trust on the Adjacent Tract, (ii) OBP's rights under this Agreement as to Easement Area 1 shall be suspended until such delinquent amount is paid in full together with a fee equal to ten percent (10%) of the delinquent amount, and (iii) American Fund may take whatever action it desires to suspend such rights, including, without limitation, blocking access to the driveways located in Easement Area 1. Notwithstanding anything contained herein to the contrary, in no event shall OBP be responsible for reimbursing American Fund for OBP's Share of the Easement Area 1 Costs until OBP begins construction on the Adjacent Tract.

Notwithstanding anything contained herein to the contrary, if American Fund or any future owner of the Property fails to adequately repair and/or maintain the driveways located in

Easement Area 1 within thirty (30) days after receipt of written notice from OBP (which period shall be extended if the applicable repairs and/or maintenance cannot be completed within thirty (30) days using diligent efforts), OBP may take reasonable and necessary action to perform the necessary maintenance and repairs. If OBP performs such work, OBP shall be entitled to recover from American Fund the commercially reasonable, actual, third party costs thereof, as supported by written invoices and/or receipts from the applicable third parties providing such work, plus a fee of fifteen percent (15%) of the costs incurred in performing such maintenance and repairs. If American Fund fails to reimburse OBP for such costs within thirty (30) days after receipt of a statement, then OBP shall have a lien against the Property for such costs and expenses until same are paid by American Fund, but such lien shall be subordinate to the first lien of any deed of trust on the Property.

Notwithstanding anything contained herein to the contrary, within thirty (30) days after completion of any improvements on the Adjacent Tract, OBP shall repave the driveway located in Easement Area 1 at its sole cost and expense.

B. OBP, at its sole cost and expense, shall maintain and repair the Asphalt Drive located in Easement Area 2 (the "Easement Area 2 Costs") in the condition required by this Agreement, required by Applicable Codes and/or required in order to keep any certificates of occupancy for improvements constructed on the Property from time to time in full force and effect.

Notwithstanding anything contained herein to the contrary, if OBP or any future owner of the Adjacent Tract fails to adequately repair and/or maintain the driveways located in Easement Area 2 within thirty (30) days after receipt of written notice from American Fund (which period shall be extended if the applicable repairs and/or maintenance cannot be completed within thirty (30) days using diligent efforts), American Fund may take reasonable and necessary action to perform the necessary maintenance and repairs. If American Fund performs such work, American Fund shall be entitled to recover from OBP the commercially reasonable, actual, third party costs thereof, as supported by written invoices and/or receipts from the applicable third parties providing such work, plus a fee of fifteen percent (15%) of the costs incurred in performing such maintenance and repairs. If OBP fails to reimburse American Fund for such costs within thirty (30) days after receipt of a statement, then (i) American Fund shall have a lien against the Adjacent Tract for such costs and expenses until same are paid by OBP, but such lien shall be subordinate to the first lien of any deed of trust on the Adjacent Tract, (ii) OBP's rights under this Agreement as to Easement Area 1 shall be suspended until such delinquent amount is paid in full, and (iii) American Fund may take whatever action it desires to suspend such rights, including, without limitation, blocking access to the driveways located in Easement Area 1.

C. By exercising the rights granted to American Fund hereunder, American Fund, for itself and its successors and assigns to the Property, agrees (i) to be absolutely and solely liable for any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, arising out of, or relating in any way to, American Fund's use, and the use by any parties acting by, through or under American Fund, of Easement Area 2, and (ii) to indemnify, defend and hold OBP harmless from and against any and all claims, suits, demands,

actions, fines, damages, and liabilities, and all costs and expenses thereof, incurred by OBP and arising out of, or relating in any way to, American Fund's use, and the use by any parties acting by, through or under American Fund, of Easement Area 2. The above and foregoing notwithstanding, American Fund shall have no responsibility for damage caused by emergency vehicles to property or improvements located within Easement Area 2.

D. By exercising the rights granted to OBP hereunder, OBP, for itself and its successors and assigns to the Adjacent Tract, agrees (i) to be absolutely and solely liable for any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, arising out of, or relating in any way to, OBP's use, and the use by any parties acting by, through or under OBP, of Easement Area 1, and (ii) to indemnify, defend and hold American Fund harmless from and against any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, incurred by American Fund and arising out of, or relating in any way to, OBP's use, and the use by any parties acting by, through or under OBP, of Easement Area 1.

4. Maintenance of Stormwater Drainage Facilities. Each party shall have the responsibility, at such party's sole cost and expense, for regular mowing and debris removal within that portion of Easement Area 3 as is located on such party's respective property, which shall be performed by such parties to ensure that such areas remain sightly and in a first-class working condition. Except for the obligations set forth in the immediately preceding sentence, American Fund, at its sole cost and expense, shall maintain and repair the slope walls and detention basins located in Easement Area 3, and OBP shall reimburse American Fund for fifty percent (50%) ("OBP's Share") of the reasonable cost and expense incurred by American Fund to maintain and repair the slope walls and detention basins located in Easement Area 3 (the "Easement Area 3 Costs"). OBP shall pay OBP's Share of such Easement Area 3 Costs within thirty (30) days after receipt of a statement setting forth the Easement Area 3 Costs incurred by American Fund and OBP's Share thereof. If OBP fails to reimburse American Fund for such Easement Area 3 Costs within thirty (30) days after receipt of a statement, then American Fund shall have a lien against the Adjacent Tract for such costs and expenses until same are paid by OBP, but such lien shall be subordinate to the first lien of any deed of trust on the Adjacent Tract.

Notwithstanding anything contained herein to the contrary, if American Fund or any future owner of the Property fails to adequately repair and/or maintain the slope walls and detention basin located in Easement Area 3 within thirty (30) days after receipt of written notice from OBP (which period shall be extended if the applicable repairs and/or maintenance cannot be completed within thirty (30) days using diligent efforts), OBP may take reasonable and necessary action to perform the necessary maintenance and repairs. If OBP performs such work, OBP shall be entitled to recover from American Fund the commercially reasonable, actual, third party costs thereof, as supported by written invoices and/or receipts from the applicable third parties providing such work, plus a fee of fifteen percent (15%) of the costs incurred in performing such maintenance and repairs. If American Fund fails to reimburse OBP for such costs within thirty (30) days after receipt of a statement, then OBP shall have a lien against the Property for such costs and expenses until same are paid by American Fund, but such lien shall be subordinate to the first lien of any deed of trust on the Property.

C. By exercising the rights granted to American Fund hereunder, American Fund, for itself and its successors and assigns to the Property, agrees (i) to be absolutely and solely liable for any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, arising out of, or relating in any way to, American Fund's use, and the use by any parties acting by, through or under American Fund, of Easement Area 3, and (ii) to indemnify, defend and hold OBP harmless from and against any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, incurred by OBP and arising out of, or relating in any way to, American Fund's use, and the use by any parties acting by, through or under American Fund, of Easement Area 2.

D. By exercising the rights granted to OBP hereunder, OBP, for itself and its successors and assigns to the Adjacent Tract, agrees (i) to be absolutely and solely liable for any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, arising out of, or relating in any way to, OBP's use, and the use by any parties acting by, through or under OBP, of Easement Area 1, and (ii) to indemnify, defend and hold American Fund harmless from and against any and all claims, suits, demands, actions, fines, damages, and liabilities, and all costs and expenses thereof, incurred by American Fund and arising out of, or relating in any way to, OBP's use, and the use by any parties acting by, through or under OBP, of Easement Area 3.

## 5. OTHER TERMS.

A. All notices, demands, statements, and requests required or permitted to be given under this Agreement must be in writing and given, delivered, or served, either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address of which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of the Property or the Adjacent Tract, the applicable new owner shall give written notice to the owner of the other property of the name and address of such owner. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the addresses set forth in the opening paragraph of this Agreement.

B. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or Adjacent Tract to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any owner shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

C. Invalidation of any of the provisions contained in this Agreement or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect.

D. American Fund and OBP acknowledge that the entire agreement, intent and understanding between American Fund and OBP is contained in the provisions of this Agreement and the exhibits attached hereto, and any stipulations, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Agreement shall have no legal or equitable effect or consequence unless reduced to writing herein or in the exhibits attached hereto.

E. This Agreement may be amended or modified only by written instrument recorded in the Registry sign by all owners of the Property and the Adjacent Tract.

F. Time is of the essence respecting this Agreement.

G. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

H. This Agreement shall be construed in accordance with the laws of the State of Mississippi.

I. To the extent allowed by law, if any suit or proceeding is instituted by any party hereto against the other party, the non-prevailing party in such suit or proceeding shall be responsible for paying the other party's costs and expenses relating to such suit or proceeding (including, without limitation, reasonable attorneys fees and expenses).

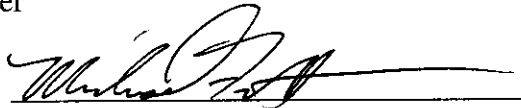
J. The terms of this Agreement and all easements and covenants established by this Agreement shall constitute covenants running with, and shall be appurtenant to, the land affected. All terms of this Agreement and all easements, covenants, rights and obligations established by this Agreement shall inure to the benefit of and be binding upon the parties which have an interest in the Property or the Adjacent Tract and their respective successors and assigns in title, and all references to OBP shall mean and include all future owners of the Adjacent Tract, and all references to American Fund shall mean and include all future owners of the Property.

**SEPARATE SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

AMERICAN FUND US INVESTMENTS LP, a  
Delaware limited partnership

By: AMERICAN FUND US INVESTMENTS  
GP, LLC, a Delaware limited liability company, its  
manager

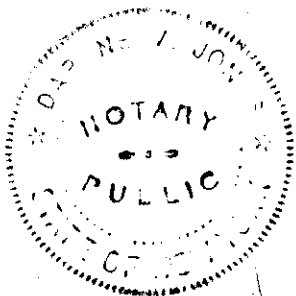
By: 

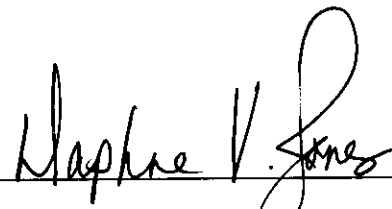
Name: Michael Fruchtman

Title: Authorized Manager

STATE OF New York )  
COUNTY OF New York )

On the 3rd day of September, in the year 2008, before me, the undersigned, personally appeared Michael Fruchtman, personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the individual whose name is subscribed to within this Agreement and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ capacity as Authorized Manager of American Fund US Investments GP, a Delaware limited liability company, as manager for American Fund US Investments LP, a Delaware limited partnership, and that by his/~~her~~ signature executed the instrument on behalf of said partnership.



  
Notary Public for the State of New York  
Commission expires: November 21, 2009

DAPHNE V. JONES  
Notary Public, State of New York  
No. 01JO6137419  
Qualified in New York County  
Term Expires November 21, 2009



OBP:

OBP HEW II, LLC, a Tennessee limited liability  
company

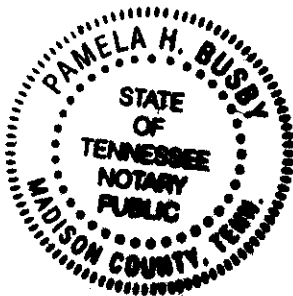
By: Olive Branch Partners, a Tennessee  
general partnership

Title: Member

By: *James E Campbell, III*  
Name: JAMES E CAMPBELL, III  
Title: MANAGING PARTNER

STATE OF Tennessee )  
 )  
COUNTY OF Madison )

On the 3<sup>rd</sup> day of September, in the year 2008, before me, the undersigned, personally appeared James E Campbell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this Agreement and acknowledged to me that he/she executed the same in his/her capacity as managing partner of OBP, and that by his/her signature executed the instrument on behalf of said corporation.



*Pamela H. Busby*  
Notary Public for the State of Tennessee

Commission expires: My Commission Expires MAR. 22, 2010

**EXHIBIT A**

**PROPERTY**

Lot 1, Olive Branch Partners Industrial Park Subdivision, situated in Section 25, Township 1 South, Range 6 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book S104 Pages 29 and 30 in the office of the Chancery Clerk of DeSoto, Mississippi.

**EXHIBIT B**

**ADJACENT TRACT**

Lot 2, Olive Branch Partners Industrial Park Subdivision, situated in Section 25, Township 1 South, Range 6 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book S104 Pages 29 and 30 in the office of the Chancery Clerk of DeSoto, Mississippi.

